No. .....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

WESLEY HAMMONDS, ET AL.,
Petitioners,

VS.

CITY OF CORPUS CHRISTI, TEXAS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT.

BRIEF IN OPPOSITION—REPLY

NOW COMES City of Corpus Christi, Respondent, and files this Brief in Opposition and Reply to the Petition for Writ of Certiorari hereby disclosing matters and grounds showing why the cause should not be reviewed by this Court. Petitioners' attorney herein is making his third attempt to get his foot in the door of this Court, concerning the same annexation proceedings which have twice been sustained by the trial and appellate State Courts of Texas, with Writ of Certiorari denied by the United States Supreme Court in both cases. This attorney seeks, by a

method of shifting names of his group who are interested in continuing this type of litigation, to avoid the defense of res judicata. The previous attempts appear as Causes No. 621, of October Term, 1963, and No. 563, of October Term, 1964, of this Court. The last mentioned cause was styled *W. L. D. Winship et al., Appellants,* v. *City of Corpus Christi, Texas, Appellee,* 373 S.W. 2d 844, Writ of Cert. denied ..... U.S. .....; 13 L. Ed. 551. The Appellate Court of Texas made the finding:

> "The suit involves two annexations of territory by the City of Corpus Christi in the years 1961 and 1962. It was instituted against the City by a group claiming to be property owners and taxpayers within the territory sought to be annexed. Another group intervened, claiming to be taxpayers and owners within the former City Limits. Nueces County Water Control and Improvement District #2 also intervened and thereafter Plaintiffs amended, naming Nueces County Fresh Water Supply District #1 as an additional Defendant. All of the said parties, except the City of Corpus Christi, appear herein as appellants, contending that the said annexations are invalid and that the trial judge should not have sustained the motion for summary judgment of the City upholding the same." *W. L. D. Winship et al.* v. *City of Corpus Christi, Texas,* 373 S.W.2d 844 (Civ. App. Ref. n.r.e.).

The Federal Trial Court Judge herein sustained the motion to dismiss of the Respondents (Defendant City in the Trial Court), making the finding:

> "Exactly the same points attacking the validity of the annexation ordinances in the Pennington and Winship cases are being raised in the present case." (Page 40, Petition herein).

Petitioners apparently labor under the misapprehension that they are entitled to relief by this Court upon the facts

alleged in their Petition unless Respondents can point out some law which specifically states that such relief as they request cannot be granted to them. Petitioners, on page 22 of their Petition, recite that:

> "The parties to this suit were not parties to any other suit that is mentioned in the opinions of the Trial Court or Court of Appeals. The issues are not the same as in those cases. The attorney is the same but there is no law forbidding such."

These conclusions of Petitioners are contrary to the finding of the Trial Judge and the Court of Appeals herewith. (Petition page 47).

Petitioners, on page 2 of Petition, mention the fact that Appellant had filed a motion for rehearing and that it was overruled on April 27, 1965, but such petition for rehearing is not a part of the Petition nor an appendix to it. The Judgment of the Court was filed March 31, 1965, and appears on page 50 of the Petition. It is apparently the attempt of Petitioners to obtain a writ of certiorari because of alleged errors in the judgment rather than alleged error in the order denying the petition for rehearing. Said judgment was filed March 31, 1965, more than ninety (90) days prior to the filing of Petition for Writ of Certiorari. No notice of appeal was given by Petitioners. It is respectfully submitted that the Petition was not filed within the time limit of Rule 22, United States Supreme Court Rules.

This action is not a suit in quo warranto. It is an action by separate property owners, unconnected with each other, alleged to be the owners of various pieces of property scattered throughout an area which was annexed to the City of Corpus Christi in the course of two annexation proceedings which have already been the sub-

ject of the above mentioned two lawsuits. The contention of Petitioners is as set forth on page 8 of their Petition herein that "there was no due process of law in said annexation". Petitioners' statement regarding the allegations of their complaint in the Trial Court shows that those allegations are very general and somewhat conflicting.

On page 12 of their Petition, it is alleged that the annexations, do not comply with a City Charter, a State Statute and a State Constitution. These allegations have been twice buried by the Texas Courts which have uniformly held that the subject annexation proceedings were in all things proper and the annexations are valid. However, on page 6 of the Petition, Petitioners' attorney, and some of the same individuals involved in the previous cases, are now attempting to exhume the same case by clothing it in a general allegation that the City Charter and annexation ordinances are unconstitutionl. The foregoing allegations are not only vague, they are contradictory as well. If Respondent failed to follow statutory and charter mandates, the question of their constitutionality is not reached. If Petitioners bottom their case on the unconstitutionality of the Charter, State Statutes and State Constitution, they must first admit that Respondent complied with them. Petitioners' reluctance to take either of the two positions has resulted in a failure to take any effective position at all.

Certainly such a situation comes within the language of Mr. Justice Black in his statement of the decision of the Court in *Bell* v. *Hood* in part quoted by Petitioners. The quotation appearing on pages 19 and 20 of Petition herein is followed by the Statement of Justice Black:

> "The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction

> where the alleged claim under the constitution or Federal Statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Bell* v. *Hood,* 327 U.S. 678 at 682, 90 L. Ed. 943.

Petitioners make no allegations that the annexations are not and will not be beneficial to them. Only general statements of discrimination appear. Petitioners nowhere allege that the City of Corpus Christi, or its officers or employees railroaded the annexation proceedings through for any unlawful purpose of taxing the Petitioners' property or to deprive them of a livelihood, or to take away some previously existing civil or political right. Yet the decision in *Gomillion* v. *Lightfoot,* 364 U.S. 339, is specifically based on such an allegation, which there was uncontroverted. Petitioners here complain about annexation having incidentally resulted in inequality in taxation. While the *Gomillion* v. *Lightfoot,* 364 U.S. 339, case does distinguish the case of *Hunter* v. *Pittsburgh,* 207 U.S. 161, cited by the Trial Court and Circuit Court of Appeals herein, said Gomillion Opinion on page 343 says:

> ". . . If one principle clearly emerges from the numerous decisions of this Court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers."

Petitioners fail to show any basis for Federal jurisdiction over their claim for relief under the facts involved in this case. The *Gomillion* case was a deliberate attempt to deprive citizens of an existing right by the exercise of a corporate power while here no rights are alleged to be taken away and no motive to do so is alleged to exist.

Hunter v. *City of Pittsburgh*, 207 U.S. 161, should be controlling.

CONCLUSION AND PRAYER

In its simplest form the Petitioners, or at least the attorney for Petitioners and some of the Petitioners, are attempting for the third time to invoke the jurisdiction of this Supreme Court of the United States concerning the validity of said annexation proceedings of the City of Corpus Christi on the grounds that said annexation did not comply with the concept of due process of law as set forth in the Constitution of the United States as interpreted by the Courts. This is attempted to be established by ignoring the many decisions specifically ruling that the Federal Court has no jurisdiction of such a proceeding, and by seizing upon many isolated statements contained in Court Opinions which have nothing to do with annexation proceedings, taxation questions and other incidental questions raised by Petitioners. Annexation proceedings have never been a matter within the jurisdiction of the Federal Courts. The opinion of the Trial Court and the opinion of the Circuit Court cite ample authority on this point. Writ of certiorari was denied by this Supreme Court on a very definite statement of facts exceedingly positive on the nature of injury which would result by such annexation in the recent case of *Pan American Production Co.* v. *Texas City*, 303 S.W.2d 780 (Tex. Sup. Ct., 1957), Appeal Dismissed 355 U.S. 603.

This was not a hasty Council decision nor a political maneuver to deprive anyone of any property or privileges but an invocation of the democratic method of submitting the issue of annexation to an election by the voters resident in the City. The incidental tax questions are solely questions for the State Courts which have jurisdiction to

render adequate remedies. *City of Orange, Texas*, v. *Livingston Shipbuilding Co.*, 5th Circuit Ct., 1958, 258 F.2d 240. As was stated at the outset above the Petition is merely a succession of general statements as to the legal basis for relief requested by Petitioners and we bow to the wisdom of the Court for the 5th Circuit in discerning the points at issue. The disposition of such points against the contentions of Petitioners are correct and Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I, I. M. Singer, a member of the Bar of the Supreme Court of the United States, representing the Respondent herein, do hereby certify that this Brief in Opposition—Reply has been served upon Petitioners by depositing copies thereof in the United States mail in Corpus Christi, Texas, with first-class postage prepaid, to Sidney P. Chandler, P. O. Box 6216, Corpus Christi, Texas, counsel of record for Petitioners, this the 4 day of August, 1965.

I. M. SINGER